



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/23/07	Bill No:	<a href="#">SB 955</a>
Tax:	Property	Author:	Ackerman
Related Bills:			

## BILL SUMMARY

This bill would reduce the penalty levied when a state assessee files an incomplete property statement.

### CURRENT LAW

**Annual Property Statements.** Every year for property tax assessment purposes, the Board determines the value of property owned by public utilities and other companies subject to state assessment as provided by Article XIII, Section 19 of the California Constitution. These companies must file detailed information with the Board in a form called a "property statement" by March 1 or by an extension date each year. The deadline for companies to file this statement can for good cause be extended twice. The property statement includes documents such as financial schedules, schedules of leased equipment, a tangible property list, statement of land changes, annual reports to the CPUC, SEC Form 10Ks, annual reports to shareholders, and other documents as specified in the property statement instructions which can vary according to the type of state assessee.

**Penalty for Late or Incomplete Statements.** Failure to provide this information by March 1 or by the extension date results in the application of a penalty. The calculation of the penalty varies depending upon the type of information found to be deficient. In the case of a state assessee who fails to provide information needed to develop the state assessee's unitary value, the penalty is 10% of the **entire** unitary value (i.e. land, improvements, personal property). The penalty is added to the assessed value adopted by the Board. §830(c)(1)

**Penalty Cap.** However, any penalty imposed on a state assessee for failure to provide information is capped at \$20,000,000 of assessed value. At the general 1% tax rate, this results in a maximum penalty of \$200,000. §830(c)(5)

**Penalty Abatement.** Penalties for late or incomplete filings may be abated, in whole or in part, by the Members of the Board of Equalization. A state assessee may file a petition to have the penalty abated. For unitary property, a petition must be filed no later than July 20. The petition for penalty abatement must be in writing and must present facts establishing that:

- There was a reasonable cause for the incomplete or delayed filing;
- The problem occurred despite best efforts to file a complete and/or timely statement; and
- The assessee did not intentionally neglect its filing obligations. §830(f)

If the assessee wants to make an oral presentation before the Board, the request must be included in the petition. Otherwise, the Board will consider the merits of the written

petition and the Board staff's written recommendation and make its decision at a public meeting (nonappearance agenda).

The Board hears petitions for penalty abatement between the date a timely petition is received and December 31 of the same year. The Board must reach a decision on such petitions no later than December 31.

#### PROPOSED LAW

This bill would amend Section 830 of the Revenue and Taxation Code to require that instead of a flat 10% penalty, the penalty be "10% of the unit value multiplied by the ratio that the replacement cost of the property **not timely reported** bears to the replacement cost of all taxable property in the unit."

#### COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author. Its purpose is to link the amount of the penalty to the proportion of the public utilities total value represented by the property not timely reported.
2. **The author states that the provisions of this bill are intended to clarify existing law.** However, the provisions of this bill are contrary to the manner the Board applies the penalty provisions. The Board has consistently applied the 10% penalty provisions of Section 830(c)(1) to the entire unitary value of the property as opposed to a ratio as this bill proposes. Case in point, the Board recently heard an appeal by a state assessee (Cingular Wireless) that filed a petition for penalty abatement in which it argued that the penalty should be calculated by multiplying the unit value by the ratio of the replacement cost of the omitted property to the replacement cost of the total property, and then multiply that product by 10%. This argument was based on a phrase in Section 830 that speaks of adding a penalty "of so much of the property that was not reported." Ultimately, the Board did not abate the penalty in full but did partially abate the penalty.
3. **The Board in its judgment has fully abated penalties for minor omissions. Moreover, the Board may modify any penalty it finds excessive by granting a partial abatement.** In some cases, the Board has determined that the magnitude of the penalty, 10% of the assessed value of very high value companies, was disproportionately large for a minor transgression and therefore abated the penalty in full. More recently, the Board has provided for partial abatement of penalties. Partial abatement permits a penalty to be tailored to fit the nature and materiality of the omission.
4. **The provisions of this bill are not administratively workable.** It is not possible to calculate the amount of the penalty using the method that the bill prescribes until the omitted property is reported or until the omitted forms are provided, as the case may be. Administratively, the penalty for not providing information by March 1 must be added to the value set in May – just two months later. If the omitted property has not been provided by May, there is no way to calculate the amount of the penalty. Furthermore, if it is not a particular physical asset (a particular piece of property) that is not reported, but a missing item like the income or expense statement that is relevant to the appraisal of the property, how would a partial penalty apply? A flat 10% penalty, rather than a ratio of some unknown omission, is administratively workable.

5. **Failure to timely and fully submit information hinders the Board's ability to properly value these properties on an annual basis as the law requires.** When a state assessee fails to provide information relating to the unit, not only are there problems with applying the proposed penalty when the state assessee completely fails to provide the information, but the Board is unable to value the unitary property initially and must resort to estimating the value of the property on prior year's information or other information in the Board's possession. Such failures to submit information hinders the Board's ability to arrive at the value of the unitary property in the first place, and therefore, the penalty is a flat 10% rather than some kind of ratio.
6. **This reduces the effectiveness of the penalty as a compliance tool.** The penalty provisions for full and complete filing are a compliance tool. If the penalty is based on a sliding scale "ratio" then it loses its effectiveness as a compliance tool. If taxpayers begin filing incomplete property statements, then the Board may not have enough time or information to properly estimate the unit value of the taxpayers' unitary properties.
7. **This bill specifies that "replacement cost" be used as the basis of determining the amount of the penalty.** In some cases, this has the effect of reducing the penalty to even less than 10% of the value of the property that was not timely reported. The use of "Replacement Cost" rather than "Replacement Cost Less Depreciation," the Income Approach, or Comparative Sales Approach, depending upon circumstances unique to the particular state assessee in question, may result in an even greater reduction in the amount of the penalty calculated than that envisioned by the proponents of this measure.
8. **The bill presumes that the Board calculates the replacement cost of every state assessee which is not the case.** The proposed penalty procedures could not be used for the railroad industry, since the Board does not calculate replacement cost or replacement cost depreciation less depreciation for railroads, thus, making the penalty procedures impossible to apply to that industry.

## **COST ESTIMATE**

This bill would require additional time in determining the calculation of penalties for failure to file a timely or complete property statement.

## **REVENUE ESTIMATE**

This measure does not have any direct revenue impact. Any change in revenues would result from the Board levying a penalty based on the proposed ratio where it previously would have levied at the full 10% of the entire property's value. Thus, to that extent, it could reduce the amount of penalties levied for late or incomplete filing.

Analysis prepared by:	Rose Marie Kinnee	(916) 445-6777	4/23/07
Contact:	Margaret S. Shedd	(916) 322-2376	

ls

0955-1rk.doc

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*